

Brief description of changes between the Proposed Rule and the Adopted Rule

Changes Other than Editing from Proposed to Adopted Version:

The Department of Commerce (Commerce) made non-substantive, editorial changes to both Chapters 365-190 and 365-196 WAC. These represent the final edits from the proposed rules published with the CR-102 to the rules adopted and published with the CR-103. Some changes were made in response to public comment, while others were identified internally. All changes made were for rule clarity and to more closely adhere to the underlying statute.

In addition to the changes below, Commerce made several minor changes to address typographical errors, correct grammar, relocate text to more appropriate sections, and use terminology in the rule that is more internally consistent and more closely aligned with terms and phrases used in the Growth Management Act (GMA). For specific edits please also see the Concise Explanatory Statement available upon request from the Department of Commerce, Growth Management Services Unit, and available on the project web site, www.commerce.wa.gov/wacupdate.

Chapter 365-190 WAC

WAC 365-190-020 Purpose. Under subsection (5), the term “relative economic importance” was replaced with the more general term “relationship” in response to comments.

Under subsections (6) and (7), changes were made in response to comments to clarify that the section applies generally to both critical areas and natural resources lands.

WAC 365-190-030 Definitions. Under subsection (3), the last sentence was removed in response to comments. This text was repeated from WAC 365-190-100 but was not a definition.

The definitions of “cities”, “fish and wildlife habitat conservation areas” and “minerals” were relocated to place them in the proper alphabetical order.

Under subsection (8), the term “subject to ponding” was replaced with a more technically accurate term and in response to comments.

Under subsection (19), the term “manipulation” was replaced with the more technically correct term “alteration” in response to comments.

WAC 365-190-040 Process. Subsection (4)(b) was relocated to WAC 365-190-120 in response to comments and to place it in the section that is specific to mineral resource lands.

Under Subsection (4)(c), reference to the “natural heritage program” was added in response to comments.

Subsection (5)(d) was revised in response to comments and to use terminology more closely aligned with terms used in statute. See note on findings under RCW 36.70A.030.

Under Subsection (9)(a), the last sentence is removed, because it was redundant with subsection (5)(d).

Under Subsection (10), modifications were made to reference the designation criteria when reviewing designations.

Under Subsection (12), modifications were made in response to comments and to reference statutory requirements in RCW 36.70A.177. The last sentence of subsection (12) was relocated to WAC 365-190-070(3).

WAC 365-190-050 Agricultural resource lands. Under subsection (3)(c), text within three criteria was deleted in response to comments. These three criteria with changes included subsection (3)(c)(ii) “types of agriculture that existing in the area...”, subsection (3)(c)(iii) “the availability of water...”, and subsection (3)(c)(xi) “...the extent that plats have incompatibility notices.”

WAC 365-190-060 Forest resource lands. Under subsection (2)(c), the previously stricken text under subsection (1), referencing “private forest land grades”, was retained in response to comments.

Under subsection (3), the term “carbon emission off-sets” was replaced with “carbon sequestration benefits”, which better describes their potential future commercial use. New text, specifying how secondary benefits should be considered, was also added in response to comments and to better reflect the statutory basis for resource lands designations.

WAC 365-190-070 Mineral Resource Lands. Subsection (4 (e) was added to mirror legislative findings (See note in RCW 36.70A.030) and to maintain consistency of approach between resource land types.

WAC 365-190-080 Critical Areas. Under subsection (2), the phrase “that support listed species” had been removed in response to comments and to adhere more closely to the underlying statute.

WAC 365-190-100 Critical Aquifer Recharge Area. Under subsection (3), changes were made in response to comments to better address chloride intrusion into aquifers adjacent to marine waters.

Subsection (4)(c) was changed in response to comments to connect aquifer recharge to habitat goals.

WAC 365-190-120 Geologically Hazardous Areas. Modifications were made in subsections (5) and (6) to respond to comments and increase technical accuracy.

WAC 365-190-130 Fish and Wildlife Habitat Conservation Areas. Modifications were made in subsections (1) and (4) to respond to comments and increase technical accuracy.

Chapter 365-196 WAC

WAC 365-196-010 Background. Under subsection (1)(c), the following language was added: “bounded by the goals and requirements of the GMA.” This language was added, in response to a comment, to better clarify the State Supreme Court’s interpretation of the scope of local discretion for developing comprehensive plans and development regulations under the act.

WAC 365-196-210 Definitions of terms as used in this chapter. Under subsection (2), the definitions for “achieved densities”, “allowed densities” and “assumed densities” were modified in response to comments on WAC 365-196-300, 315 and 325.

Under subsection (7), the following sentence in the definition for “concurrency” was changed to remove the term “available public facilities” from this definition.

Under subsection (35), the definition for “transportation system management” is modified in response to comments and to improve technical accuracy.

WAC 365-196-300 Urban Density. Under subsection (2)(a) reference to a range of densities is moved to subsection (2)(b) in response to comments and to better mirror statutory terms used in RCW 36.70A.110.

WAC 365-196-310 Urban growth areas. Subsection (1)(d) is modified to clarify the language explaining the population projections originating from the Office of Financial Management.

Subsection (1)(h) is modified to respond to comments and to emphasize the city/county coordination requirements in RCW 36.70A.110.

Under subsection (3)(a)(vii) the text is from “should” to “must” changed to correctly describe a requirement under the GMA and maintain consistency with WAC 365-196-300 and WAC 365-196-425. The change requires that inside and urban growth areas densities must be urban and outside the urban growth areas densities must be rural.

Under subsection (3)(c)(ii), new sentence added in response to comments and to better ground the subsection to the underlying statutory direction found in RCW 36.70A.110(4) and RCW 36.70A.210(1).

Under subsection (3)(c)(v), additional text is added to improve internal consistency. This sentence is a repetition of WAC 365-196-480.

Under subsection (3)(e)(i), a new sentence is added that states, “Site-specific proposals to expand the urban growth area should be deferred until the next comprehensive review of the urban growth area.” This staff-initiated change was to avoid the potential misperception that the previous sentence recommended outright rejection of all citizen initiated or site specific proposals. This sentence clarifies that the recommendation relates to the timing and context of the consideration of such proposals, but does not call for outright rejection of such proposals.

WAC 365-196-315 Buildable lands review and evaluation. Commerce made several changes to this section to better specify the scope of the consistency test. Participants voiced concern that the rule called for the test to occur for every separate zoning classification. Commerce as made a series of coordinated changes to better specify that the comparison called for is with the comprehensive plan. Changes to the definitions of “assumed densities, allowed densities and achieved densities” in WAC 365-196-210 and WAC 365-196-300 were coordinated with these changes.

WAC 365-196-320 Providing urban services. Under subsection (1)(a) the citation to RCW 36.70A.030(18) was corrected.

Under subsection (1)(f), several minor text edits were made to increased consistency with terminology used in RCW 36.70A.11(4) regarding on-site sewer systems.

WAC 365-196-405 Land use element. Under subsection (2), the paragraphs (b) through (n) were partially reordered, although no amendments to the text within the paragraphs have been made unless otherwise noted. These changes placed the recommendations in a more logical sequence by grouping the inventory components ahead of the decision points.

WAC 365-196-410 Housing element. Subsection (2)(d)(i), was rewritten to correct an inconsistency with WAC 365-196-405 regarding where the handoff occurs between the Land Use and the Housing element. The changes clarify that the needs analysis identifies units and the identification of land and density occur in the land use element.

WAC 365-196-415 Capital facilities element. Under subsection (2)(a)(i), the phrase “posses unused capacity” was replaced with “have capacity for future growth.” This change was made for clarity, to address the suggestion that it would be helpful to specify what “unused capacity” means in the context of sewer and water supply facilities and if this infers specific reporting requirements.

Subsection (2)(b)(ii), was revised to clarify that counties and cities include in the comprehensive plan's capital facilities element the proposed locations and capacities for the twenty-year planning period covered by the comprehensive plan. Funding was more fully covered under WAC 365-196-415(2)(c).

WAC 365-196-425 Rural element. Under subsection (6), a new subsection (b) was added in response to comments calling for a definition of existing uses. This definition was a restatement of the definition specified in RCW 36.70A.070(6)(d)(v).

WAC 365-196-430 Transportation element. Under subsection (1) the following sentence: "Each comprehensive plan shall include a transportation element that implements, and is consistent with, the land use element." was added in response to comments and to better adhere to the text of RCW 36.70A.070(6).

WAC 365-196-455 Land use compatibility adjacent to general aviation airports. Subsection (2)(e) in the proposed rule was moved to subsection (1)(d). This was a restatement of the essential public facility requirement as it applies to general aviation airports. This was in response to comments and to maintain consistency with WAC 365-196-550.

WAC 365-196-465 Major industrial developments. In response to comments, the statutory definition of major industrial development found in RCW 36.70A.365 has been added to the rule under subsection (2)(a).

WAC 365-196-470 Industrial land banks. In response to comments, the statutory definition of Industrial Land Bank found in RCW 36.70A.367 was added to the rule at (1)(a).

WAC 365-196-480 Natural resource lands. Under subsection (2)(f) a cross-reference to WAC 365-196-815 was added.

WAC 365-196-485 Critical areas. Under subsection (2) the phrase "the following areas and ecosystems: has been added to correct and inconsistency with RCW 36.70A.030(5).

Subsection 2(c) is modified in response to comments, to avoid using the term "overlay" inconsistently with the way the term is most commonly used by the intended user.

WAC 365-196-500 Internal consistency. Under subsection (1), the example contained in the last sentence was removed in response to comments and to improve consistency with WAC 365-196-400. Commerce concluded the example did not illustrate the principle articulated.

Under subsection (2), a new subsection (a) was added in response to comments and to improve consistency with WAC 365-196-400, 405 and 425.

A new subsection (5) was added containing cross references to other rule sections including WAC 365-196-800, WAC 356-196-305 and WAC 365-196-315

WAC 365-196-540 Compliance by regional agencies and special purpose districts. Under subsection (1) the term “special purpose districts” is edited to match the term most commonly used in statute.

WAC 365-196-550 Essential public facilities. Under subsection (1)(d), the subparagraph labeled “(xii) Public or private utility facilities” was removed from the list of the facilities and types of facilities identified in RCW 36.70A.200 as essential public facilities in subsection (d). This was not an item in the list contained in RCW 36.70A.200 and was included in error.

Under subsection (4)(b)(ii), the subsection was removed because it is redundant with subsection (1)(e).

Subsection (6)(d), was removed in response to comments. Commerce concluded this additional step was not commonly used, nor was it required by statute, and the principle is better articulated under subsection (3).

WAC 365-196-600 Public participation. Subsection (10) was modified in response to comments to clarify that the list of examples is not intended to be exhaustive list.

WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations. Subsection (1)(e)(ii) was modified to more closely match RCW 36.70A.130(1).

WAC 365-196-630 Submitting notice of intent to adopt to the state. Under subsection (2), a new subsection (c) was added in response to comments to clarify how to submit supplemental materials to the department.

WAC 365-196-640 Comprehensive plan amendment procedures. Subsection (2) was modified in response to comments and to better match RCW 36.70A.140.

Subsections (3)(a) and (3)(b) were modified to improve organization, improve clarity and to use terminology used in RCW 36.70A.130 (2)(a) and (b).

WAC 365-196-735 State and regional authorities. Under subsection (2)(k), the state Planning Enabling Act, RCW 36.70, was added as a new item in response to comments. Subsequent subsections are re-numbered as needed.

Under subsection (4)(b), a reference to the Washington Transportation Plan was added in response to comments.

WAC 365-196-815 Conservation of natural resource lands. Three changes were made to increase consistency with the RCW 36.70A.060. Under subsection (1)(b)(i), the term “agricultural production” was changed to “resource production”. The term “nonagricultural purposes” was changed to “nonresource purposes” Under subsection (1)(e), the distance measurement “three hundred feet” was changed to “five hundred feet”.

Under subsection (3)(a), the phrase “conservation of natural resource lands” was changed to “conservation of agricultural lands” to maintain consistency with RCW 36.70A.177.

WAC 365-196-820 Subdivisions. Under subsections (1) and (2) new items were added. The list of statutory items was incomplete in the proposed rule.

WAC 365-196-825 Potable water. The first sentence in subsection (2) is removed in response to comments and because it was contrary to clear language of RCW 19.27.097. The last sentence in subsection (2) was relocated to subsection (1) for improved clarity. The remaining subsections are re-numbered as needed.

The last sentence in subsection (5) was removed in response to comments and to avoid inconsistency with of Attorney General Opinion (AGO 2009, No. 6), regarding the permitting of exempt wells.

WAC 365-196-835 Relocation assistance for low-income tenants. Under subsections (1), the paragraph was divided up into additional subsections (2), (3), (4), and (5) for improved readability.

Under subsection (2), additional text from the underlying statute were added for consistency, including a definition of “assisted housing development” and the requirement that reasonable and public hearing most precede the establishment of a relocation assistance regulation.

WAC 365-196-840 Concurrency. Under subsections (2) and (3) the statutory reference to highways of statewide significance was added in response to comments and to include all statutory requirements.

Under subsection (3)(d), a recommendation to coordinate level of service with other service providers was added in response to comments and to maintain consistency with WAC 365-196-415 and 365-196-540.

WAC 365-196-845 Local project review and development agreements. Under subsection (4) the first sentence was removed because it is redundant with the following sentence. Subsection (6)(a) is rewritten to remove the inadvertent inclusion of a restriction not found in the underlying statute.

WAC 365-196-855 Protection of private property. The phrase “should consider” was changed to “must use” to correct in response to comments to correct an inconsistency with RCW 36.70A.370.

WAC 365-196-870 Affordable housing incentive programs. The text of this section is removed. Upon careful review of comments on this section, the department has determined additional

clarity is needed, as well as more time to gather additional input on new guidance on affordable housing incentive programs during the next WAC amendment cycle.